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August 6, 2003

ADVANCE BY FAX: 703-305-9373ORIGINAL BY EXPRESS MAIL

Office of the Solicitor  
U.S. Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450

Attn: Associate Solicitor William Jenks, Esq.

Re: U.S. Patent 6,431,874  
Patentee's "Rule 322(a)(4) Response and Rule 181 Petition"

Dear Mr. Jenks:

As you know, we are counsel to several accused infringers of the subject patent in pending litigation *A. Goen Seminars v. Gorayeb Seminars Inc., et al.*, Civil Action No. 03-1051(KSH), USDC NJ.

We supplement our letter to Mr. Hearn of June 10, 2003 (copy annexed) with the following information and facts, which have come to light in discovery in the litigation and which belie the denial by Mr. Pohl of the accuracy of the Interview Summary (December 14, 2001) at page 4 of his "Response/Petition", to wit: **"Regrettably, the INTERVIEW SUMMARY fails to specify exactly what amendment was agreed to."**

**What was agreed to, was entry of an Examiner's Amendment when and if the Examiner would make of record prior art teaching the three-part combination of (A) education and (B) hypnosis and (C) a non-lobelia anti-smoking drug.**

Associate Solicitor William Jenks, Esq.  
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1. On December 14, 2001, Mr. Pohl admittedly had an interview with Examiner Rimmel in which Examiner Rimmel stated in the Interview Summary: "Agreed to Examiner's Amendment to place application in condition for allowance," i.e. – "change 'an anti-smoking drug' to –lobelia–." This interview is acknowledged by Mr. Pohl at page 3 of his Response/Petition.

2. Mr. Pohl omitted from the "Factual Background" of the subject Response/Petition the critical facts that three days after the December 14, 2001 interview in which Pohl agreed (according to the Interview Summary record) to amend the broad claims 1 and 11 from "an anti-smoking Drug" to "lobelia," Mr. Pohl filed a C-I-P application (Serial No. 10/023,254, filed December 17, 2001, published May 16, 2002 – US2002/0058238A1) in which he submitted virtually the identical claim 1 to that claim 1 which was agreed to be limited to lobelia and Mr. Pohl added paragraphs "0121-0128" to the original specification including the subject matter ("new matter") of the Amendment filed 19 September 2001 (referenced at page 2 of the Response and Petition). The C-I-P claim 1 and erroneously printed claim 1 and "new matter" paragraphs 121-128 are reproduced for convenience in Exhibit A.

3. Had Mr. Pohl truly believed that there was not an agreement with the Examiner on December 14 to limit the claims to lobelia, he would not have refiled the subject matter of the non-allowed broad claim 1 three days later on December 17 in the C-I-P nor would he have needed to add "new matter." It would be a redundant and duplicative claim, i.e. "double patenting." Therefore, Mr. Pohl's filing of the C-I-P establishes that he was fully aware of the impact of his December 14, 2002 agreement with the Examiner to limit the claims in the '874 patent to lobelia.

4. In the pending litigation, Mr. Pohl produced to us his own "file wrapper" which was absent any notes or memoranda whatever to contradict the accuracy and completeness of the "Interview Summary" contemporaneously prepared by the Examiner and now challenged by Mr. Pohl. Mr. Pohl failed to produce any other evidence whatever, such as reports to his client regarding the December 14 interview or the December 17 filing of the C-I-P which contradict the accuracy of the "Interview Summary." If there were any such evidence to support Mr. Pohl's "fantasy" of what transpired in the December 14 interview, it would have and should have been appended to the subject Response/Petition. The only evidence of the agreement by Mr. Pohl to limit the claims to lobelia is found in the Patent Office "Interview Summary" of the December 14, 2001 interview and in the act of filing C-I-P claim 1 in the Patent Office on December 17, 2001. Mr. Pohl clearly agreed to the "lobelia" Amendment and immediately acted on his agreement by refileing the broader, non-allowed claim in a C-I-P. That is the clear, convincing, and inescapable evidence of the truth.

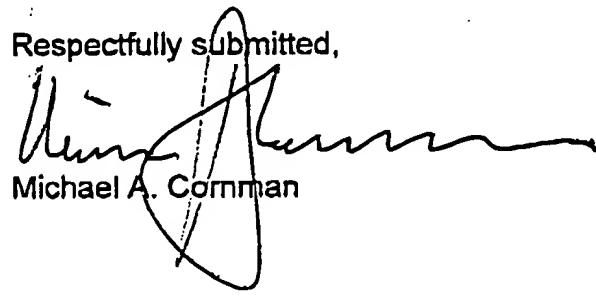
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5. Mr. Pohl, besides concocting out of whole cloth the footnote 4 "explanation," knew by June 6, 2003 that the duplicative claim 1 of the C-I-P (along with the remaining claims) had been already rejected on April 17, 2003 on prior art, but, disingenuously and in clear violation of Rule 56 Mr. Pohl argued to Mr. Hearn that there was no such invalidating prior art "of record" in the "original application". Mr. Pohl thus improperly sought and continues improperly to seek to obtain claims which were never issued and which, in any event, now have been rejected on prior art in a separate application.

6. In addition to the prior art patents known to Mr. Pohl from the C-I-P examination of the same claim 1 that he agreed to limit to lobelia in the original application (according to the record), Mr. Pohl has been fully apprised by us of other "on sale," "known to others," and "publications" statutory bars invalidating the claims of the '874 patent, however worded (corrected or uncorrected), in the pending litigation. Violating his Rule 56 duty of candor, Mr. Pohl falsely and misleadingly suggested to Mr. Hearn that there was no prior art known to him or the applicant requiring the limitation of the original claims to lobelia. Mr. Pohl and his client are accused of inequitable conduct and fraud in the pending litigation. It is respectfully submitted that the cavalier disregard for truth and candor in this limited Certificate of Correction proceeding is grossly inequitable conduct and should not be tolerated by the USPTO nor by the Courts.

It is submitted that all of Mr. Pohl's machinations cannot and should not delay the issuance of a Certificate of Correction, nor should they impede or delay the imposition of sanctions for Mr. Pohl's violations of Rules 56 and 10.18.

Respectfully submitted,



Michael A. Cornman

MAC:mlc

c: Mark Pohl, Esq. (by fax)  
Fox & Fox LLP (by fax)  
Edward Weingram, Esq. (by fax)

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For the record it is noted that on or about June 30, 2003, Mr. Pohl filed both a request for reissue and a request for reexamination of the '874 patent, and in both he deliberately omitted mention of the fact that the '874 patent was the subject of this proceeding to issue a Certificate of Correction. Mr. Pohl clearly is a serial violator of his duty of candor to the USPTO.

## 1874 PATENT

C-1-P

I claim:

1. A method for helping a tobacco smoker to stop smoking, said method comprising the steps of:
  - (A) providing to a tobacco smoker a non-conditioning educational program to educate said tobacco smoker's conscious mind, said educational program including education both on the disadvantages of smoking and on conscious techniques to stop smoking,
  - (B) providing to said tobacco smoker at least one hypnosis program to train said tobacco smoker's subconscious mind to discourage said tobacco smoker from performing smoking behavior, and
  - (C) providing to said tobacco smoker an anti-smoking drug in an amount effective to aid in the reduction or cessation of said tobacco smoker's craving to smoke tobacco,

such that said tobacco smoker can be helped to stop smoking.

I claim:

1. A method for helping a subject to stop smoking, said method comprising:
  - (A) providing a non-conditioning educational program to educate the conscious mind to discourage smoking behavior;
  - (B) providing a hypnosis program to train the subconscious mind to discourage smoking behavior; and
  - (C) providing a stop-smoking substance in an amount effective to aid in the reduction or cessation of a craving to smoke tobacco.

C-1-P "NEW MATTER"

## [0121] Stop-Smoking Substances

[0122] A stop-smoking substance is a substance which helps a smoker to curtail or stop smoking. One example is a nicotine receptor antagonist. I discuss above how nicotine receptor antagonists such as lobelia help a smoker to curtail smoking, by blocking neural receptors for nicotine. Other nicotine receptor antagonists can help a smoker to curtail smoking in a similar manner as does lobelia. Such substances are suitable as stop smoking substances.

[0123] Anti-depressant substances can also function as stop smoking substances. This is because smokers often smoke to calm themselves, when they are tense or scared. Further, a smoker pursuing a stop-smoking program may sense increased stress due to both physiological factors (e.g., nicotine withdrawal) and emotional factors (e.g., changing a long-term behavioral pattern or habit). Anti-depressant substances reduce the user's nervous tension level. In so doing, this can reduce the user's craving to smoke.

[0124] An example is bupropion hydrochloride, commercially available from Glaxo-Wellcome Pharmaceuticals Corp. This same chemical compound is sold both as prescription-strength WELLBUTRIN® brand anti-depressant drug product, and the prescription-strength ZYBAN® brand stop-smoking drug product. It is believed the anti-depressant effect is responsible for the products' efficacy as

a stop-smoking substance. Other anti-depressant drug substances are known in the art. These include certain bicyclic, hydrazide, hydrazine, pyrrolidone, tetracyclic, tricyclic and other compounds.

[0125] Anti-depressants also include non-drug substances such as certain herbs and nutritional supplements. I discuss certain ones above, such as gotu kola and kava kava. Gotu kola leaf has been shown to relieve stress and improve behavioral patterns. This produces a calming effect within the body, relieving stress. Kava kava root contains kavalactones, recognized for their biological activity as a sedative. Additional constituents have been used for their ability to combat nervous anxiety and unrest. Other non-drug substances can also be used as anti-depressants.

[0126] Anxiolytic substances can also function as stop-smoking substances, using much the same mechanism as anti-depressants do. Examples of anxiolytic drug substances include certain arylpiperazine, benzodiazepine derivative and carbamate compounds. Anxiolytic substances also include non-drug substances such as certain herbs and nutritional supplements. I discuss certain ones above, such as gotu kola and kava kava.

[0127] Stop smoking substances thus use a number of currently-known mechanisms (e.g., nicotine receptor antagonist, anti-depressant, anxiolytic). As public concern grows over the damages of smoking, I expect—and hope—that additional stop smoking substances will be found.

[0128] I use the terms "drug substance," "drug" and "dietary supplement" as those terms are defined in the Federal Food, Drug & Cosmetic Act and the regulations promulgated thereunder.

EXHIBIT A